

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL RAZAVI,

Plaintiff,

v.

DEPARTMENT OF VETERANS
AFFAIRS, et al.,

Defendants.

No. 2:20-cv-1825-KJM-KJN PS

ORDER

(ECF No. 11, 12)

On January 21, 2021, the court received plaintiff's self-titled "Motion to Dismiss Complaint Without Prejudice." (ECF No. 11.) Defendants responded, arguing that plaintiff's filing should be construed as a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). (ECF No. 12.) The court concurs.

Rule 41(a)(1)(A) provides that "the plaintiff may dismiss an action without a court order by filing . . . (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment" See Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) ("Under Rule 41(a)(1), a plaintiff has an absolute right voluntarily to dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Even if the defendant has filed a motion to dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal under Rule 41(a)(1). The dismissal is effective on filing and no court order is required...Unless otherwise stated, the dismissal is ordinarily without prejudice to the plaintiff's


1 right to commence another action for the same cause against the same defendants.”); see also
2 United States v. Real Property Located at 475 Martin Lane, Beverly Hills, CA, 545 F.3d 1134,
3 1145 (9th Cir. 2008) (noting that dismissal under Rule 41(a)(1)(A)(i) requires no action on the
4 part of the court and divests the court of jurisdiction once the notice of voluntary dismissal is
5 filed).

6 Here, defendants have not yet served an answer or motion for summary judgment in this
7 case. Therefore, plaintiff’s request for dismissal is effective without a court order. However, for
8 purposes of clarity, the undersigned now ORDERS that:

- 9 1. Plaintiff’s notice of voluntary dismissal under Rule 41(a)(1)(A)(i) is found to be effective;
- 10 2. The findings and recommendations on defendants’ motion to dismiss (ECF No. 10) are
11 WITHDRAWN as moot; and
- 12 3. The Clerk of Court is directed to CLOSE this case and vacate all dates.

13 Dated: January 26, 2021

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE